

UTAH WATER QUALITY BOARD

ROBERT PECTAL	DOCKET NUMBER I09-09
AND	SETTLEMENT AGREEMENT
CINDY TAYLOR TRUCKING & CONSTRUCTION 297 W. HILTON, SUITE 3B ST. GEORGE, UTAH 84770	

This **SETTLEMENT AGREEMENT** (hereinafter "**AGREEMENT**") is between **ROBERT PECTAL** and **CINDY TAYLOR TRUCKING & CONSTRUCTION** (hereinafter "**OPERATOR**") and the **UTAH WATER QUALITY BOARD** (hereinafter the "**BOARD**"), concerning violations of the *Utah Water Quality Act* (the *Act*), *Utah Code Annotated*, and the *Utah Administrative Code*.

1. The **BOARD** has authority to administer the *Utah Water Quality Act, as amended 1953*, (hereinafter the "*ACT*").
2. The **BOARD** has been delegated authority by the U.S. Environmental Protection Agency (EPA) to administer the *National Pollutant Discharge Elimination System (NPDES)* permit program under the *Federal Clean Water Act (CWA)*.
3. The parties now desire to resolve this matter fully without further administrative proceedings except to the extent provided herein by entering into this **AGREEMENT**. Entering into this **AGREEMENT** is not an admission of liability or factual allegation set out in the **NOTICE**, nor is it an admission of or an agreement to any disputed facts or disputed **legal** theories, nor is it an admission of any violation of any law, rule, regulation or permit by the **OPERATOR**.
4. The **EXECUTIVE SECRETARY** of the **BOARD** (hereinafter the "**EXECUTIVE SECRETARY**") will administer the terms and provisions of this **AGREEMENT**.
5. This **AGREEMENT** resolves the **NOTICE OF VIOLATION** and **ORDER**, Docket Number **I09-09** (hereinafter the "**NOTICE**"), between the **OPERATOR** and the **BOARD**, issued to the **OPERATOR** on May 18, 2009, by the **BOARD**. It does not in any way relieve the **OPERATOR** from any other obligation imposed under the *Act* or any other State or Federal laws.
6. In resolution of said **NOTICE** referenced in Paragraph 5 of this **AGREEMENT**, the **OPERATOR** agrees to pay a total penalty amount of \$16,550. The **OPERATOR** agrees to pay **\$550.00** to the Division of Water Quality ("**DWQ**") no later than 30

calendar days after the effective date of this **AGREEMENT**. The **OPERATOR** agrees to pay **\$16,000.00** to the **American Public Works Association (APWA)**, specifically for training purposes through the **Storm Water Advisory Committee (SWAC)** and comply with the **FUNDING AGREEMENT** (attached) between the **OPERATOR** and **APWA - SWAC**. The **OPERATOR** agrees to pay at least \$500 a month to **APWA** starting 60 days after this **AGREEMENT** is effective until the total **\$16,000.00** is paid. At the **OPERATOR's** discretion the **OPERATOR** may pay at a faster rate. All checks submitted to **DWQ** must be made payable to the State of Utah delivered or mailed to the Division of Water Quality, Department of Environmental Quality, 288 North 1460 West, P.O. Box 144870, Salt Lake City, Utah 84114-4870. The penalty has been determined using the *Penalty Criteria for Civil Settlement Negotiations, Utah Administrative Code ("UAC") R317-1-8* which considers such factors as the nature, severity and extent of the violations, history of noncompliance, degree of willfulness and/or negligence, good faith efforts to comply, and economic benefit.

- a. The **FUNDING AGREEMENT** is approved by the **EXECUTIVE SECRETARY**.
 - b. The **OPERATOR** agrees to provide the **EXECUTIVE SECRETARY** with evidence of timely payment to **APWA - SWAC**. Notice of payment shall be made within 30 days of payment.
 - c. If for any reason **APWA - SWAC** does not utilize the funds for the work outlined in the **FUNDING AGREEMENT** within 33 months of the effective date of this **AGREEMENT**, then the **OPERATOR** is required to submit any unused funds to **DWQ** within 30 days of this deadline.
 - d. If for any reason a **FUNDING AGREEMENT** cannot be agreed upon by the **OPERATOR** and **APWA - SWAC**, then the **OPERATOR** shall submit the balance of **\$16,000.00** to **DWQ** at the same payment schedule described in paragraph 6 above.
 - e. The **OPERATOR** agrees not to deduct or otherwise attempt to obtain a tax benefit from the total penalty amount.
7. The **OPERATOR** agrees to comply with the terms of the **FUNDING AGREEMENT** with **APWA - SWAC**.
 8. **Nothing** contained in this **AGREEMENT** shall preclude the **BOARD** from taking additional actions to include additional penalties against the **OPERATOR** for permit violations not resolved by this **AGREEMENT**.
 9. If an agreement between the **OPERATOR** and the **EXECUTIVE SECRETARY** cannot

CINDY TAYLOR TRUCKING & CONSTRUCTION
Settlement Agreement, Docket No. 109-09

be reached in a dispute arising under any provision of this **AGREEMENT**, then the **OPERATOR** or the **EXECUTIVE SECRETARY** may commence a proceeding with the **BOARD** under the *Administrative Procedures Act* to resolve the dispute. A final decision in any adjudicative proceeding shall be subject to judicial review under applicable state law.

10. Nothing in this **AGREEMENT** shall constitute a waiver by the **OPERATOR** to raise in defense any legal or factual contention for future allegations of noncompliance.
11. Nothing in this **AGREEMENT** shall constitute or be considered as a release from any claims, to include natural resource damage claims, cause of action, or demand in law or equity which the **STATE** may have against the **OPERATOR**, or any other person, firm, partnership or corporation for any liability arising out of or relating in any way to the release of pollutants to waters of the State.

AGREED to this 17 day of Sept, 2010.

ROBERT PECTAL

UTAH WATER QUALITY BOARD

Cindy Taylor Trucking & Construction
297 W. Hilton, Suite 3B
St. George, UT 84770

By 
Authorized Agent

By _____
Executive Secretary

FUNDING AGREEMENT
CINDY TAYLOR TRUCKING & CONSTRUCTION AND APWA, UTAH CHAPTER,
STORM WATER ADVISORY COMMITTEE

This Funding Agreement (hereinafter "**FUNDING AGREEMENT**") is entered into between **CINDY TAYLOR TRUCKING & CONSTRUCTION** (hereinafter "**OPERATOR**") and **APWA, UTAH CHAPTER, STORM WATER ADVISORY COMMITTEE** (hereinafter the "**APWA - SWAC**") and is effective the 17 day of Sept, 2010.

RECITALS

1. The **OPERATOR** has entered into a Settlement Agreement (hereinafter "**SA**") with the Utah Division of Water Quality (hereinafter "**DWQ**") to resolve an outstanding Notice of Violation and Order, Docket No. I09-09, issued on June 29, 2009.
2. The **OPERATOR** is entering into this **FUNDING AGREEMENT** to meet requirements of the **SA**. In the **SA** and through this **FUNDING AGREEMENT**, the **OPERATOR** agrees to provide funding for a storm water educational conference, a training course for storm water inspector training, and to provide other training opportunities or classes related to storm water treatment, handling, and management that **APWA - SWAC** is preparing to provide. The funding contribution will be in the amount of **\$16,000.00**. The Work Plan (hereinafter "**WP**") associated with this **FUNDING AGREEMENT** outlines the outreach efforts.

FUNDING AGREEMENT

Now therefore, for the promises contained herein, and for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. The **OPERATOR** will pay to **APWA - SWAC** the sum of **\$16,000.00** in payments of **\$500** paid every 30 days for 32 months starting 60 days after effective date of the **SA** to fund services, materials, and pay for facilities described in the **WP** to provide education and training for construction storm water inspectors, consultants, construction workers, contractors, and developers in Utah. **APWA - SWAC** will notify **DWQ** when the funds are received. The **WP** must be approved by **DWQ**. Each payment of **\$500.00** shall be made to **APWA, Utah Chapter**, by check. The check will be mailed to the treasurer of the Utah Chapter of the **APWA**, Mike Riddle at:

Mike Riddle
JUB Engineers
2875 S. Decker Lake Dr., Suite 575
Salt Lake City, Utah 84119

2. **APWA - SWAC** will perform the work described in the **WP** in Appendix A. **APWA -**

SWAC shall complete the work within one year of the effective date of the **SA**. Within 30 calendar days of completion of the work, **APWA - SWAC** shall provide to the **OPERATOR** and **DWQ**, a report describing the work accomplished including, attendance sheets, agendas, and any other evidence that the work in the **WP** was completed.

3. In the event that **APWA - SWAC** does not utilize the entire **\$16,000.00** or fails to complete the work in the **WP**, **APWA - SWAC** will refund all remaining funds to the **OPERATOR**. The refund to the **OPERATOR** is due within 30 calendar days of **APWA - SWAC**'s knowledge that the funds will not be used. The **OPERATOR** must submit any returned remaining funds to **DWQ** within 30 days of receipt from **APWA - SWAC**.

4. All notices, payments, and other communications under this **FUNDING AGREEMENT** shall be in writing and transferred by First Class U.S. mail with return receipt requested or courier to the authorized representatives shown below. A Party must notify the other Parties of any representative or address changes.

Cindy Taylor Trucking & Construction
Ford Stewart
PO Box 910220
297 W. Hilton Dr., Suite 4B
St. George, Utah 84791-0220

APWA – Utah Chapter
Kevyn Smeltzer
C/O Salt Lake County Public Works
7125 S. 600 W.
Midvale, Utah 84047

UTAH DIVISION OF WATER QUALITY
Walter L. Baker, P.E.
Director
P.O. Box 144870
195 North 1950 West
Salt Lake City, Utah 84114-4870

5. The undersigned represents that each has authority to enter into this **AGREEMENT** on behalf of his/her respective Party.

6. No amendment, change or modification to this **FUNDING AGREEMENT** or **WP** shall be valid unless it is in writing signed by all Parties hereto. At least ten days prior to making such changes, written notice of the change shall be provided to **DWQ**.

7. All of the terms and conditions contained herein shall inure to the benefit of, and shall be binding upon, the Parties hereto and their respective successors and assigns. Neither party may

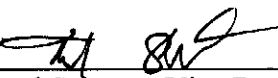
assign its rights herein without prior written consent of the other Party hereto, which consent shall not be unreasonably withheld.

8. The **OPERATOR's** obligations under this **FUNDING AGREEMENT** shall terminate upon compliance with paragraphs 1 and 3 above in the agreement section. **APWA - SWAC's** obligations shall terminate upon compliance with paragraph's 1, 2, and 3 in the agreement section.

9. This **FUNDING AGREEMENT** shall be in effect upon signature by the **OPERATOR's** and **APWA - SWAC's** authorized agents and after the **OPERATOR** and **EXECUTIVE SECRETARY** sign the **SA** to resolve the Notice of Violation and Order issued to the **OPERATOR**.

CINDY TAYLOR TRUCKING & CONST.

APWA – UTAH CHAPTER

By 
Ford Stewart, Vice President, Cindy
Taylor Trucking & Construction

By _____
Kevyn Smeltzer, APWA President, Utah
Chapt.

Approved by:
DIVISION OF WATER QUALITY

By _____
Walter L. Baker, Director